



Winston Hickox
Secretary for
Environmental
Protection



Gray Davis
Governor

**MINUTES OF
REGULAR MEETING
Friday, December 7, 2001
REGIONAL WATER QUALITY CONTROL BOARD**

Friday, December 7, 2001, 8:30 a.m.

Chairman Gary Shallcross called the meeting of the Central Coast Regional Water Quality Control Board to order at 8:40 a.m. on December 7, 2001, in the Conference Room of the Central Coast Regional Board Office, 81 Higuera Street, Suite 200, San Luis Obispo, California.

1. Roll Call..... Executive Office Technician Carol Hewitt
[8:45 to 8:50 p.m.]

Board Members Present:

Chairman Gary Shallcross
Vice Chair Leslie Bowker
Vice Chair Bruce Daniels
John Hayashi
Russell Jeffries
Marco Rizzo
Donald Villeneuve
Jeffrey Young

2. Introductions..... Executive Officer Roger Briggs

Executive Officer Roger Briggs introduced staff and new Board members Marco Rizzo, Don Villeneuve, and returning Board member Russell Jeffries. Mr. Briggs congratulated Board member John Hayashi for his appointment by the Governor to the State Board of Food and Agriculture. Mr. Briggs asked all interested parties who wished to comment to fill out testimony cards and submit them.

Supplemental Sheets are included for Item 10/City of Pismo Beach, Item 12/Discharge to Low Threat to Water Quality, Item 14/Montecito Sanitary District, Item 15/Louis Calcagno dba Moon Glow Dairy, Item 17/San Luis Obispo CSA #7, Oak Shores Development, Item 18/Lake San Antonio Recreation

Area, South Shore, Item 19/Lake San Antonio Recreation Area North Shore, and Item 23/Duke Energy Morro Bay Power Plant.

Responses to Board Questions and Answers are included for Items 7, 12, 13, 14, 15, 17, 18, 19, and 20.

Item 21/Monarch Grove Wastewater Reclamation Facility was deferred to a future Board meeting.

3. Approval of Minutes for October 26, 2001 Meeting..... Board Motion

MOTION: Bruce Daniels moved to approve the minutes for the October 26, 2001 meeting. A roll call vote was taken. **CARRIED** - (5 yes, 3 abstained - Jeffries, Rizzo, and Villeneuve)

4. Public Forum..... Chair Shallcross

- Al Barrow, resident of Los Osos discussed the unaffordability of the sewer project in Los Osos. He is concerned for people on fixed incomes. Mr. Barrow thanked Regional Board staff for answering questions that he submitted. He asked that the Board consider approving a ponding system similar to the one in Templeton.
- Edwin Schafer, resident of Los Osos, voiced objection to the cost and the implementation of a large sewer system.
- Ray Smith, Salinas, provided background information on the Oak Hills wastewater pond. He demonstrated that the bottoms of the ponds do not leak. He also noted that the nearby strawberry fields drain and collect at the end of the wastewater ponds. The monitoring well is affected by several hundred acres of strawberry field drainage.
- Tom Guernsey expressed concern about completing the cleanup in Avila Beach. Mr.

Briggs asked for clarification on a report Mr. Guernsey said was missing.

- Norine Schaffer, resident of Los Osos, expressed concern about the unaffordability of the sewer system.
- Vita Miller, resident of Los Osos, spoke about the economic effect of the \$150,000,000 sewer system on a small community of 15,000 people.
- Linda Owen, resident of Los Osos, addressed the expense of the Los Osos sewer. She stressed that 35-50% of the community would not be able to afford to continue living in Los Osos.

Mr. Briggs said staff would follow up on Mr. Smith's concerns about Oak Hills, and that staff will provide a report for an upcoming Board meeting on Los Osos and all the alternative evaluations that have been done over the years to try to come up with the most affordable, effective system.

5. Low Threat Cases..... Information/Discussion

Executive Officer Briggs recommended: 1) a conditional waiver of waste discharge requirements for Texaco Exploration and Production, 2) that Kenko, Inc./Orcutt proceed under the waste discharge requirements general permit, 3) that Beacon Station No. 400/Watsonville proceed under the general permit,

and 40 that Santa Clara Valley Water District/West Little Llagas Creek Sediment Removal Project receive a waiver of waste discharge requirements in conformance with the Basin Plan waiver policy. There was no objection from the Board.

6. Uncontested Items..... Board Motion

Executive Officer Roger Briggs recommended adding Items 14 and 20 if the Board is satisfied with the answers to the questions asked by the Board and

distributed. Board member Young asked to leave Item 14 off of the consent agenda.

MOTION: Russell Jeffries moved to approve Items 15, 16, 17, 18, 19, 20, and 22. **SECONDED** by Bruce Daniels. A roll call vote was taken. **CARRIED** - (6 yes, 2 abstained - Rizzo, Villeneuve)

7. MTBE Sites [Jay Cano 805/549-3699].....Status Reports

Mr. Jay Cano, Senior Engineer provided an overview of the underground tank cleanup cases in the Central Coast Region. For benefit of the new Board members, he outlined some of the reasons and content of the report. Staff answered several questions regarding

various sites. In response to Board requests, more details will be provided regarding Santa Barbara County sites.

(Chair Shallcross announced a break at 9:50 a.m. The meeting reconvened at 10:00 a.m.)

10. City of Pismo Beach [Bruce Paine 805/542-4782]..... Order No. 01-117

Chairman Shallcross read an opening statement and all interested parties were sworn in. Bruce Paine explained that the proposed mandatory penalty was the result of the discharge from the City of Pismo Beach (City) Wastewater Treatment Plant having exceeded Waste Discharge Requirements Order No. 99-31. The exceedances mandated a penalty of \$42,000 for 16 serious violations and \$78,000 for 30 chronic violations, for a total of \$120,000. On the behalf of the City, Mr. David Hunt, City Attorney presented arguments as to why the penalty should be waived, reduced, or redirected. The City argued that a waiver was justified based on the cause of the violations being an act of god or grave natural disaster; reduction was based on a single operational upset having caused or contributed to some of the violations; and redirecting was based on the City being a small community with a financial handicap in which case the Regional Board could redirect the penalty money to a compliance project. The City also proposed that the matter be

continued if the Regional Board was unable to take action on the redirecting issue due to a lack of State Board policy.

Two members of the public also spoke regarding this item. Mr. Larry Erickson, citizen of Pismo Beach, encouraged the Board to fine the City, stating that he believed they had violated the law and fines were the only way to get the City's attention. Ms. Marilee Hyman, another citizen of Pismo Beach, stated that she believed it was not in the best interest of the City and its citizens to be fined. The fines would serve no purpose and indeed financially hurt the people of Pismo Beach.

Board Members asked many questions of staff, City representatives, and the Board's counsel, Jennifer Soloway.

MOTION: Bruce Daniels moved to adopt Mandatory Penalty Order No. 01-117 with a penalty of \$120,000 to include an amendment. The amendment consisted of a finding in which the request for redirecting the penalty money to a compliance project was rejected based on the lack of a legal definition of what constitutes a "small community and financial hardship" under Water Code Section 79084. **SECONDED** by Russell Jeffries. A roll call vote was taken. **CARRIED** - (7 yes, 1 no - Hayashi)

(Chair Shallcross announced a lunch break at 12:17 p.m. The meeting reconvened at 1:45 p.m.)

(Jennifer Soloway, Staff Counsel, gave an introductory legal training presentation to the Board to benefit the new members)

14. Montecito Sanitary District [Mike Higgins 805/542-4649] Order No. 01-116

Proposed Order No. 01-116 renews NPDES Permit No. CA0047899. Board Member Young asked questions regarding the quantity of solids, Biochemical Oxygen Demand, and trihalomethanes discharged to

the Pacific Ocean from the wastewater treatment plant. Staff responded to the questions in a supplemental sheet. During the public meeting, Mr. Young requested staff and Mr. Jerry Smith, the District's

General Manager, clarify a couple of issues. Subsequently, the Board voted to adopt the proposed

Order.

MOTION: Bruce Daniels moved to adopt Order No. 01-116. SECONDED by Russell Jeffries. A roll call vote was taken. CARRIED – Unanimously (8-0)

11. Spectra-Mat, Inc. [Wei Liu 805/542-4628] Order No. 01-152

Chairman Shallcross read an opening statement and all interested parties were sworn in. Staff recommended assessment of an Administrative Civil Liability (ACL) in the amount of \$3,000 against Spectra-Mat, Inc. at Watsonville, Santa Cruz County. The ACL was for Spectra-Mat's violation of the Regional Board requests pursuant to Water Code 13267. Doug Cook, Sampson

Engineering, Inc., consultant to Spectra-Mat, Inc. addressed the Board and explained that an error was made with the monthly sampling schedule and that the sampling schedule was placed in a quarterly mode. Mr. Cook asked the Board to reconsider issuing the fine or adjust the amount of the fine.

MOTION: Bruce Daniels moved to adopt ACL Order No. 01-152 with an assessment of \$3,000 to Spectra-Mat, Inc. SECONDED by Leslie Bowker. A roll call vote was taken. CARRIED – Unanimously (8-0)

12. Discharger with Low Threat to Water Quality [Matt Thompson 805/549-3159] Order No. 01-119

Board Member Jeffries recused himself from this item due to possible conflict with his service for the Moss Landing Harbor District. Matt Thompson, Staff Water Resource Control Engineer, presented Order No. 01-119, for the reissuance of the General NPDES Permit for Discharges with Low Threat to Water Quality. Mr. Thompson discussed the proposed permit and addressed comments from the Monterey Bay National Marine Sanctuary and the Ocean Conservancy. Michelle Roest, of the Monterey Bay National Marine Sanctuary, stated that flow-through seawater systems should not be considered for enrollment under the proposed permit, because such facilities may introduce exotic species to receiving waters. Ms. Roest also stated that brine from small seawater desalination facilities should not be regulated under the low threat permit.

In response to Board Member questions, Mr. Thompson stated that regulation of exotic species is the purview of California Department of Fish and Game (DFG), and that DFG has implemented programs that prevent infestation and escape of exotic species from aquaculture facilities.

Regional Board legal counsel, advised that exotic species from flow-through seawater systems may qualify as a waste discharge, therefore, the Regional Board could regulate them if they so chose. Board Chairman Shallcross suggested that staff closely evaluate what the Regional Board may do, in addition to DFG's efforts, to improve regulation of exotic species. Board Member Daniels suggested that a separate general permit for flow-through seawater systems be considered by staff. Mr. Daniels also requested that a prohibition of discharges to Areas of Special Biological Significance be added.

MOTION: Jeffrey Young moved to adopt Order No. 01-119 to include the following amendments: 1) to remove the aquaria, and 2) addition of prohibition of discharges under this general permit to Areas of Special Biological Significance. SECONDED by Bruce Daniels. CARRIED – Unanimously (7-0) Jeffries recused.

MOTION TO RECONSIDER: Leslie Bowker moved to reconsider the original motion. SECONDED by Bruce Daniels. CARRIED – Unanimously (7-0) Jeffries recused.

FINAL MOTION: Bruce Daniels moved to adopt Order No. 01-119 to include the following amendments: 1) flow-through seawater systems are excluded from consideration of enrollment under the permit (delete Finding 4.b.), and 2) a prohibition of discharge to areas of special biological significance is added (a new item B.6.). SECONDED by Marco Rizzo. CARRIED – Unanimously (7-0) Jeffries recused.

13. Permit for Highly Treated Groundwater [Burton Chadwick 805/542-4786]..... Order No. 01-135

Chairman Shallcross read an opening statement and all interested parties were sworn in. Burton Chadwick, Associate Engineering Geologist in the underground tanks unit, presented a brief overview of the proposed permit including five revisions as a result of Board Member comments. Noel Sheno, Calclean, presented

comments that pertain to the requirement to notify property owners within a 300-foot radius of each discharge location. The Board discussed this requirement and directed staff to continue with this notification, as a staff procedure, upon enrollment of each new permittee.

MOTION: Leslie Bowker moved to adopt Order No. 01-135 as amended. SECONDED by Bruce Daniels. CARRIED – Unanimously (8-0)

(Chair Shallcross announced a break at 3:30 p.m. The meeting reconvened at 3:38 p.m.)

23. Duke Energy Morro Bay Power Plant [Michael Thomas 805/542-4623]..... Status Report

Michael Thomas, staff Water Resources Control Engineer, presented a brief update on the Morro Bay Power Plant project. Two main reports must be submitted before the NPDES permit for this project to be drafted. These reports are independent analyses of cooling water system alternatives for the Power Plant. One report is being done for the Energy Commission by Aspen Environmental consultants, another for the Regional Board by Tetra Tech. The main systems being reviewed are dry cooling (a closed system like the radiator in a car), wet cooling (where heated water is cooled in towers via forced air), and a hybrid system (a wet and dry system). The main issues to be resolved are costs, noise levels, visual impacts, and land use issues. The draft permit is expected to be available after these reports are submitted and reviewed by staff perhaps in late January.

Staff also briefly discussed the revised Clean Water Act Section 316(b) regulations. The revised regulations apply to "new facilities." The proposed Morro Bay Power Plant does not meet the definition for a new facility, however, the regulations do provide useful guidance. The revised regulations require closed cooling systems (cooling towers) for new facilities. Most of the new power plants being constructed in California will use cooling towers.

Staff also introduced Mike Multari, Director of the National Estuary Program (NEP). Mr. Multari gave a brief overview of the Morro Bay watershed and estuary, the problems facing the estuary, and the solutions being implemented by the National Estuary Program. Mr. Multari illustrated that the estuary is

filling in with sediment due to accelerated erosion of uplands. The accelerated erosion may cause the estuary to fill in within 300 years, or less, if nothing is done to correct the problem. In its natural state, the estuary would take several thousand years to fill in. Mr. Multari described the habitat acquisition and restoration efforts planned and underway by the NEP to help correct the sedimentation problems. A rough estimate of the cost to implement the planned habitat activities is \$30 million. The habitat acquisition and restoration efforts have been identified as a priority in the NEP Conservation Plan for Morro Bay.

Following Mr. Multari's presentation, staff explained that the impact caused by entrainment of larvae is a productivity issue for those taxa that are entrained and other taxa that depend on larvae and similar life stages as a food source. The impact may include cascading effects on the estuarine food web. However, an accurate and precise definition of entrainment impacts is not possible because such a study would take many years and even if the study were done, it is unlikely that "cause and effect" could be determined. While a definitive description of entrainment impacts is not possible, the 316(b) report shows that the Power Plant is taking about 17% to 33% of the larvae for "estuarine taxa." Estuarine taxa are those that spawn in the estuary. Staff stated that extending the life of the estuary by decreasing sedimentation, and by doing habitat restoration where feasible to increase productivity after sedimentation is controlled, is a viable option for addressing the entrainment impacts. Power Plant entrainment and sedimentation both decrease productivity; however, sedimentation results

in permanent elimination of the estuarine habitat and its productivity. Therefore, sedimentation reduction via habitat acquisition (such as establishing flood plains that capture sediment) may be an option that will offset the entrainment impacts over time.

Wayne Hoffman of Duke Energy also made brief presentations, going over the proposed project and stating that the existing once-through cooling water system is the best technology available at this site. Duke Energy stated that they would not pursue the modernization project if the Regional Board requires an expensive alternative such as dry cooling. Duke Energy also mentioned that they have submitted a proposal to the Regional Board for addressing the entrainment impacts. The proposal suggests that Duke Energy be allowed to continue using the existing once-through cooling water system while pursuing the possibility of including an aquatic filter to reduce entrainment of organisms. The aquatic filter system is experimental at this time. In addition, Duke Energy proposal includes a \$5 million habitat fund as a fallback option if the filter does not work.

Several members of the Coastal Alliance on Power Plant Expansion (CAPE) also addressed the Board and expressed their concern that the habitat approach should not be considered a viable option to address entrainment impacts.

Individuals who spoke during the public comment period for this item are listed below.

Babak Naficy, Environmental Defense Center, Attorney for CAPE: The cost of dry cooling is affordable to Duke Energy as evidenced by the fact that Duke Energy is building a completely new power plant at a cost of \$650 million.

Henriette Groot, CAPE: The National Estuary Program's Conservation Plan defines sedimentation as the main threat to Morro Bay, but this document was produced before the impacts due to entrainment were defined. The main threat to the Estuary may be the power plant.

Jack McCurdy, CAPE: The volume of cooling water used for the new power plant will not decrease from the existing plant as stated by Duke Energy, and that the Regional Board staff report now indicates this.

Mandy Davis, Citizen: Dry cooling should be used to eliminate the marine impacts. The negative impacts of dry cooling are well worth the protection that would be provided by dry cooling.

David Nelson, CAPE: Supports dry cooling to eliminate marine impacts.

Greg Fuz, City of Morro Bay Planning Department: City has concerns about the negative impacts that may be caused by dry cooling or cooling towers, including visual, noise, and land use impacts.

24. Total Maximum Daily Loads [Lisa McCann 805/549-3132] Board Discussion

Staff member Lisa McCann provided information about scheduling and prioritization of Total Maximum Daily Loads (TMDLs) as background for Board members to consider providing direction regarding the proposed schedule for starting pathogen TMDLs for Arroyo Burro and Mission Creeks and beaches. She recommended against starting these TMDLs sooner because this would cause the following: delay in development of TMDLs currently in progress, inconsistency with other TMDLs to be developed for other waterbodies in the Santa Barbara south coast area, and duplicative planning efforts. Additionally, Lisa characterized the existing water quality programs currently underway that provide the authority and tools for water quality improvement in these creeks and beaches. Roger Briggs added that current program implementation activities are similar to activities for

preliminary development of TMDLs; staff has, in effect, started TMDLs for these Santa Barbara south coast waterbodies.

Drew Bohan of ChannelKeeper commented that it's unfair to start the TMDL process in the northern part of region and wait so long to start the process in the Santa Barbara south coast area. Santa Barbara continues to have close to the highest number of beach closures in the nation. He recognizes the other high priority waterbodies, but wants at least one TMDL initiated for a Santa Barbara south coast waterbody.

Jeffrey Young commented that Beach closures are "our MTBE in Santa Barbara County" and that he is anxious for the TMDL program to be implemented in the Santa Barbara south coast area.

Gary Shallcross commented that we should not divide resources equally amongst geographic areas but rather by watershed priorities. He agreed with the staff that priorities will be reconsidered by the Board very soon and those decisions will be incorporated in future scheduling.

Board Members expressed agreement with the staff recommendation, so did not provide direction; staff should proceed with schedule as planned.

25. Triennial Review List Update [Angus Lewis 805/549-3691]..... Resolution No. 01-121

The staff presentation by Angus Lewis pointed out that the purpose of the Triennial Review is to identify and prioritize Basin Plan water quality issues in the Central Coast Region for use in updating and amending the Basin Plan in an effort to maintain and enhance water quality throughout the Central Coast. The 2001 Triennial Review List issues include development of management measures, policy development, water quality objective review and development, beneficial use review and development, and textual revisions and additions to the Basin Plan. Public commentators were:

Henriette Groot, who said there should be more Areas of Special Biological Significance, like in Morro Bay Estuary, and that "water diversion" should be considered an impairment

Drew Bohan, who referred to his Channelkeeper letter asking for numeric limits rather than narrative, and a specific prohibition on bioaccumulation, and

Babak Naficy, who asked for updates on Rare and Threatened beneficial uses.

The Board discussed issues brought up by the lengthy list of proposed amendments.

MOTION: Russell Jeffries moved to adopt Resolution No. 01-121. SECONDED by Leslie Bowker. CARRIED – Unanimously (8-0)

8. Enforcement Report [Brad Hagemann 805/549-3697]..... Status Report

A written report was submitted for this item.

9. Update of State Board Enforcement Policy [Roger Briggs 805/549-3140]..... Status Report

Executive Officer Briggs reminded five of the Board members that the State Board Enforcement Policy was an item of discussion at the Water Quality Coordinating Committee in November 2001. He noted

that there is additional time for comments on the policy. The Board had no comments at this time.

28. Revised Regional Board Calendar 2002 [Roger Briggs 805/549-3140]..... Board Motion

Executive Officer Briggs brought the calendar back to the Board since they had inadvertently approved a date for a future Board meeting on the date of a November holiday, at a previous meeting. He also proposed changing the May meeting date and adding an April meeting. The Board discussed alternate dates and agreed upon the following: February 1, March 22, April 19, May 30-31, July 12, September 20, November 1, and December 6.

MOTION: Leslie Bowker moved to approve the dates discussed. SECONDED by Russell Jeffries. CARRIED – Unanimously (8-0)

29. Budget End of Year Report [Paul Jagger 805/549-3502] Status Report

Assistant Executive Officer, Paul Jagger, discussed the current fiscal year's budget. This fiscal year began July 1, 2001. He noted that budget allocations generally continue from last year, but are subject to a fund verification that is currently being conducted by State Board budget staff. Grants, reimbursements, and statewide allocations are being reviewed, and revisions and adjustments to this year's budget continue. The net total budget for the region is similar to last year's total at this time, which is fortunate as the region is fully staffed and has the lowest vacancy rate of all the

regions. He discussed the challenges facing the region in the coming year due to the statewide budget shortfall. The Governor's hiring freeze and General Fund reductions are two prominent challenges this year. Finally, he described the Board's diverse funding mix, and resulting complex, yet stable budget.

Mr. Briggs acknowledged Mr. Jagger's coming retirement and presented him with a token of the Board and staff's appreciation of his 25 years of service.

30. Executive Officer's Report [Roger Briggs 805/549-3140] Information/Discussion

Executive Officer Briggs introduced Jay Cano, Senior Engineer, who gave an overview of the pending Chevron/Estero Bay cleanup site north of the City of Morro Bay. The site is contaminated with petroleum that has spilled or leaked over many years of activity. A petition by Chevron to the State Board of a Regional Board cleanup order should be resolved soon by the State Water Resources Control Board. Following resolution of the appeal, the issue will be brought back to the Regional Board for direction on cleanup action. Board Member Daniels suggested the Chair attend the State Board workshop on this important case. Chair Shallcross agreed to attend.

Mr. Briggs discussed the SB390 Waiver Policy. This is a senate bill that places a mandate on the regional boards to review waiver policies and also review any existing waivers on a five-year basis. It represents a significant workload over the next year. The State Board will provide guidance on how to proceed.

Mr. Briggs and other Regional Board staff attended a meeting with the Los Osos Community Services District. Staff will provide a history and updates for the new Board members on the Los Osos issue.

Chairman Shallcross adjourned the public meeting at 6:30 p.m.

The meeting was audio recorded and the minutes were reviewed by management, and approved by the Board at its February 1, 2002 meeting in San Luis Obispo, CA.



Gary Shallcross, Chair